

ORIGINAL

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF

Case No.: 05-44481

DELPHI CORP.

One Bowling Green
New York, New York
March 31, 2008

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HEARING RE [MOTION TO AMEND COMPLAINT]

BEFORE THE HONORABLE JUDGE DRAIN

US BANKRUPTCY COURT JUDGE

TRANSCRIPT ORDERED BY:

SKADDEN ARPS SLATE MEAGHER & FLOM, LLP

APPEARANCES:

JOHN BUTLER, JNR.

MICHAEL RIELA

COURT TRANSCRIBER:

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1 JUDGE DRAIN: Okay. Delphi Corporation.

2 JOHN BUTLER, JNR: Your Honor, Jack Butler and Kayalyn
3 Marafioti from Skadden Arps here on behalf of the debtors for this
4 non omnibus hearing agenda involving two matters. We are seeking
5 extension of performance under various agreements.

6 Your Honor, we did file a proposed non omnibus agenda
7 and would like to take the two matters in order.

8 Your Honor, the first matter on the agenda, matter
9 number one, is the supplemental IRS Pension Funding Waiver Extension
10 Motion in Document No. 13195. The only response, which is not an
11 objection, actually it's a response in support of the relief sought,
12 was filed by the PPGC at Document No. 13264, and I will address that
13 in just a couple of moments.

14 Your Honor, this is a fourth in a series of motions that
15 we have filed seeking to get the Court's approval to enter into and
16 perform in connection with waivers issued by the IRS of certain
17 minimum funding requirements applicable to Delphi's [unclear] salary
18 pension plans.

19 The Court has earlier approved these waivers back on
20 May 31, 2007 at Document No. 8117 and again on October 26, 2007 at
21 Document No. 10726 and finally, on February 27, 2008 at Document
22 No. 12887.

23 Under the existing terms of these waivers, the waivers
24 expired today March 31. If the pension funding waivers were permitted
25 to expire the debtor's believe that the consequences would be

1 significant with respect to their prospect of emerging under Chapter
2 11 under the current plan of reorganization that has been confirmed
3 by this Court pursuant to a final Confirmation Order.

4 The debtors could face the assertion of a total potential
5 excise tax claim for the plan year ended September 30, 2006, of more
6 than \$1.4 billion and for the plan year ended September 30, 2007,
7 the debtors would be required to make what we believe would be
8 redundant cash contributions that would actually result in a projected
9 over-funding of the hourly plan.

10 As a result of our discussions with the PBGC and the
11 IRS and giving credence to the plan closing on the plan of reorganization,
12 which is scheduled to occur this Friday April 4, 2008, the PBGC
13 recommended and the IRS has granted waivers through April 7, 2008
14 subject to this Court's approval. And in fact, the actual waivers
15 were received on Friday, so I have them here in Court today.

16 Your Honor, in exchange for extending the waivers from
17 March 31, 2008 through and including April 7, 2008, we have agreed to
18 extend the letter of credit expiry date to April 22, 2008 and increase
19 the aggregate amount outstanding under those letters of credit by
20 \$2.5 million.

21 Two other comments Your Honor, regarding both relief
22 requested and the PBGC's response. First is the PBGC's response.
23 We did not file any kind of reply to the positions taken in the
24 PBGC in their response. Essentially I think it was an effort to
25 put the Court on notice of the discussions that have been had

1 between the company and the PBGC, that if the plan were not to
2 go forward in the short term and the debtors were seeking longer
3 term waivers inside of Chapter 11, that the PBGC would intend
4 to put back on the table the issue of additional collateral. And
5 they stake out in their response their view of why that would
6 be justified.

7 We don't intend to negotiate with the government
8 on the record in a courtroom. We don't agree with their view
9 particularly on the issues on what would be required and we
10 understand that many of our stakeholders have an issue on
11 elevating what our stakeholders would view to be an unsecured
12 claim to secured status. I don't think that needs to be before
13 the Court today, but I also didn't want this record to suggest
14 that our lack of response indicated that we conceded the positions
15 taken by the PBGC. They have been, as Your Honor knows, very
16 constructive in the dialogues with the company in these cases and
17 we expect that constructive dialogue to continue. And candidly,
18 in the even that the plan didn't go forward, the only basis on
19 which the company would be in a position to ultimately continue
20 as a transformation objective preservation of these pension plans
21 will be on a consensual basis the PBGC.

22 So we need to work with each other, we understand
23 it, and we very much appreciate the constructive nature of their
24 dialogue throughout this. So I simply wanted to express that
25 appreciation on the record and just indicate that we thought it

1 I wanted to make that brief statement that we didn't think
2 it was appropriate to publicly negotiate.

3 JUDGE DRAIN: Okay, understood.

4 JOHN BUTLER, JNR: Your Honor, the other item
5 in terms of relief and implementing some of the discussions
6 with the PBGC, I can imagine that there may be in the next
7 number of days an additional shorter term waiver required
8 on sort of the same basis as the prior waivers. That
9 would be a different discussion than if we weren't going to
10 go forward and promptly consummate the plan and we were having
11 a collateral discussion with the PBGC, which would clearly
12 involve our committees.

13 So I would ask Your Honor if you would consider,
14 in connection with the proposed order we have, to add an
15 additional element of the second sentence of the decretal
16 paragraphs that not only would approve the pension funding
17 waivers that we've brought before you today, but also authorize
18 us to enter into any additional supplemental modifications to
19 the pension funding waivers that are not objected to by the
20 Statutory Committees on terms generally consistent with the
21 pension funding waivers. So that if we have a if we need to
22 extend something for two, three or four days or a week we don't
23 have to come running back into Court in the short term.

24 JUDGE DRAIN: Have you discussed that with the two
25 committees?

1 JOHN BUTLER, JNR: I have not. We talked about it
2 this morning. We felt that so long as it is reviewed by them
3 in that objection then it preserves sort of a check and balance.
4 But in thinking through the
5 issues of April 7 as a week from now, and I can imagine that we
6 might need a day or two or some amount of time, and so I wanted
7 to make sure that we had the opportunity.

8 The reason I raise it is I think there is a question
9 as to whether or not the approval has to be as of the day, like
10 today if March 31, as of the day or whether it can relate back.
11 I don't want to take any risks along that line or have that sort
12 of legal debate with anybody.

13 JUDGE DRAIN: Okay.

14 JOHN BUTLER, JNR: That's why I wanted to ask.

15 JUDGE DRAIN: Does the committee have any view on this.

16 MICHAEL RIELA: Michael Riela from Latham and Watkins
17 for the Committee. This is the first I had heard about this, but I
18 understand Mr. Butler's concerns here. I think if there is enough
19 time to review, say at least a day or two, I guess if the Creditors'
20 Committee were to object I'm not sure how mechanically we would get
21 this before this Court, whether it be.

22 JUDGE DRAIN: Well, my response is that I'm generally
23 going to be around. I have a PLI thing in the morning on the 7th,
24 but you could get on for a very quick hearing on something like this
25 too. But it seems to me, given the fiduciary roles that the

1 committees play, I could approve this. But if you have any issues
2 or doubt you all should understand that I could have a hearing
3 very quickly on it.

4 MICHAEL RIELA: I understand Your Honor, and thank
5 you for that. I guess it would be teed up to this Court by a
6 motion of the debtor, I assume, or would it have to be something
7 that the Committee would have to bring up?

8 JUDGE DRAIN: I think it would be by the debtor.

9 JOHN BUTLER, JNR: Yes.

10 JUDGE DRAIN: The initial call is by the debtor based
11 on the response that the debtor got from the two committees.

12 MICHAEL RIELA: That should be fine.

13 JOHN BUTLER, JNR: Your Honor, I think there are only
14 two limitations here, one I think we need the Committee's support
15 to second [unclear] not objection to it, we need to review that
16 in ample time. And second, I think it also would need to be on
17 terms generally consistent with the current waivers.

18 JUDGE DRAIN: Right.

19 JOHN BUTLER, JNR: We're talking about extending LCs,
20 giving sort of de minimus additional collateral. I think if it
21 was going to be a discussion about a long term waiver and some
22 significant granting of leans or other collateral, I think that
23 is a different that's not what we would be contemplating by
24 this provision.

25 JUDGE DRAIN: Okay. And that raises one question

1 I have on this, which is you mentioned I think that your closing
2 schedule for the 4th, but then you are contemplating this
3 protective matter of potential extension, where do you stand on
4 the closing at this point?

5 JOHN BUTLER, JNR: Your Honor, the debtors believe
6 that we will have met all conditions to closing as of April 4,
7 and would intend to close on April 4. We're having today is
8 the date that the rights offering closes and so I don't want to
9 go beyond that stage.

10 JUDGE DRAIN: All right, well, in light of that
11 and there being no opposition to this motion, I will approve it.
12 It is certainly consistent with the prior relief granted in the
13 prior agreement by the PBGC/IRS and certainly a reasonable
14 exercise of business judgment given the timing here and the
15 nature of the plan in the [unclear] pension plan.

16 JOHN BUTLER, JNR: Thank you Your Honor.

17 JUDGE DRAIN: That Order will get under today.

18 JOHN BUTLER, JNR: Your Honor, the second matter
19 before the Court is Item No. 2 on the agenda, the GM Indemnity
20 Extension Motion filed at Document No. 13200. We did file,
21 there was a noticing issue and we sent out a restated notice of
22 Document No. 13229 because the caption of the motion wasn't
23 correct in the original notice.

24 Your Honor, this is again seeking very narrow
25 relief and is really brought by the debtors out of an abundance

1 of caution. Under the provisions of the UAW Delphi GM
2 Memorandum of Understanding that this Court approved on July 19,
3 2007, at Document No. 8693, and which was incorporated into the
4 plan of reorganization as Exhibit 7.21A of the plan of
5 reorganization at Document No. 11386, that Your Honor confirmed
6 in the Confirmation Order.

7 The debtors believe they have the authority to
8 extend the indemnification agreement for additional periods of
9 time, such as requested in the motion, and that has to do with
10 the provisions that are set forth in Sections F2 A, B, and C,
11 particularly F2C of the UAW Delphi GM Memorandum of Understanding.

12 Without the debtors determining to extend the
13 indemnity, the indemnity would otherwise expire today, on March
14 31, 2008. And the reason it would expire on this date is because
15 under the original Approval Order and the original terms of the
16 provisions the indemnity was extended from December 31, 2007 to
17 March 31, 2008 if Delphi had commenced solicitation of acceptances
18 of its Chapter 11 plan prior to December 31, 2007. But the plan
19 had not been confirmed or substantially consummated by December 31,
20 2007. We actually entered into that and Your Honor will recall that
21 Your Honor approved the disclosure statement I think on or about
22 December 10, 2007, and we commenced the solicitation, but the
23 confirmation order didn't occur until January.

24 So that brought it into March 31, 2008. The debtors
25 are seeking here the authority, but not the direction to unilaterally

1 agree to extend this. This is not a separate agreement that we have
2 to enter into. We are mindful while the plant investors have not
3 objected to this motion we are mindful of the constraints of Section
4 5P of the [unclear] out of the ordinary course agreements with
5 General Motors, this is a pre-existing agreement that was under the
6 plan of reorganization. That plan is a material investment document
7 that has already been approved by the plant investors, but we wanted
8 the unilateral right to exercise our discretion to extend the
9 indemnity for a period of up through and including April 15, 2008,
10 so long as GM had extended the UAW benefit guarantee by at least that
11 amount of time.

12 JUDGE DRAIN: Has GM done that?

13 JOHN BUTLER, JNR: I don't know Your Honor, that's
14 between GM and the UAW I presume. The way this Order is crafted our
15 extension would only be effective if they have done that. I think
16 you can read the agreement, the memorandum of understanding, by
17 providing for that frankly in Article F2.

18 JUDGE DRAIN: So it's automatically effective if they
19 have done it?

20 JOHN BUTLER, JNR: Yes Your Honor, so long as we
21 agreed to do it, then yes, we would have we are asking for the
22 discretion here to do it, but we would not be committed to extend
23 the indemnity unless GM and the UAW had extended their agreement.

24 JUDGE DRAIN: But you don't have to do anything more,
25 that condition is.

1 JOHN BUTLER, JNR: Correct.

2 JUDGE DRAIN: .self effecting if they have done it?

3 JOHN BUTLER, JNR: Yes Your Honor. Your Honor, that
4 is really the limitations of this particular, and the extent of
5 request for authority in this particular matter. We believe, as
6 I said, that we actually have the right to do this under the MOU,
7 but this is a sensitive subject for everybody involved and we
8 wanted to make sure that we had brought it on for notice there
9 are no objections from any party, and we wanted to have this
10 as a matter of record, and candidly I think both some of the other
11 major stakeholders will want it in order that the Court has
12 specifically authorized us to do this.

13 JUDGE DRAIN: Does anyone have anything to say on
14 this motion? Right. I have one question. I don't remember this
15 that well, but the Union represented by Mr. Kennedy, does this
16 I mean does this affect them at all?

17 JOHN BUTLER, JNR: No Your Honor, there are separate
18 agreements between GM and both the steel workers and the IUECWA,
19 which are separate agreements not involving the debtors and the
20 debtors did never indemnify GM in connection with those matters.
21 So those are independent agreements, they are swept up to and
22 included in the MOUs involving the steel workers and IUECWA.

23 JUDGE DRAIN: The distinction here is the separate
24 indemnity?

25 JOHN BUTLER, JNR: Correct.

1 JUDGE DRAIN: Okay.

2 JOHN BUTLER, JNR: And the only matter before the
3 Court on here is Delphi's, the debtor's indemnity obligations.
4 The other matter is between GM and the Unions and the MOUs,
5 between those parties.

6 JUDGE DRAIN: Okay, I agree with you, this does
7 seem to me to be something that you already have authority to
8 do under the existing agreement, but I think it is something
9 that both GM and the Union would like to have confirmed on the
10 record and I'm happy to do that.

11 So I will grant this motion on the basis that it
12 is unopposed and again, I think you already have the right to
13 do it.

14 JOHN BUTLER, JNR: Thank you very much Your Honor.
15 Your Honor, those are the only matters we have on this record.
16 We will submit the revised disc.

17 JUDGE DRAIN: Very well, you can email it to
18 Chambers.

19 JOHN BUTLER, JNR: Thank you Judge.
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C E R T I F I C A T I O N

I certify that the foregoing is a transcript from an
electronic sound recording of the proceedings in the
above-entitled matter taken on March 31, 2008, except
where, as indicated, the Court has modified the transcript.

Brenton Gray

Brenton Gray

4/1/08

Date